TO ASCERTAIN RABIES. — The plaintiff's dog bit the defendant's child. The defendant, fearing rabies, offered to buy the dog and have it tested by the Pasteur Institute. On the plaintiff's refusing to sell the dog, the defendant entered his house through an unlocked window, while the members of the household were absent, and killed the dog, removing the head, which he sent to the Institute, where it was found to be a healthy specimen. The plaintiff now sues for the value of the dog. *Held*, that he may recover. *Allen* v. *Camp*, 70 So. 290 (Ala.).

One who acts reasonably to avert harm threatened by the wrongful act of another, may recover from the latter for injury incurred while so acting. *Eckert* v. *Long Island R. Co.*, 43 N. Y. 502; *La Duke* v. *Exeter Township*, 97 Mich. 450, 56 N. W. 851. And if he injure or destroy property as a necessary or reasonable measure of protection against danger resulting from the tort of the owner thereof, he is not liable in damages. *Haley* v. *Colcord*, 59 N. H. 7; *Russel* v. *Barrow*, 7 Port. (Ala.) 106. Thus, it is well settled that the killing of a dog in defense of person or property is justified. *Credit* v. *Brown*, 10 Johns. (N. Y.) 365; *Reynolds* v. *Phillips*, 13 Ill. App. 557. However, the killing must be strictly a defensive measure. *Morris* v. *Nugent*, 7 C. & P. 572; *Perry* v. *Phipps*, 32 N. C. 259. The same reasoning on which such a killing may be justified, it is submitted, will justify a trespass reasonably incidental thereto. Especially is this so since the owner of a dog is liable for its attack upon a trespasser. *Woolf* v. *Chalker*, 31 Conn. 121; *Loomis* v. *Terry*, 17 Wend. (N. Y.) 497. In the principal case, though the killing was not in defense against the dog's attack, it was clearly a measure of protection against the injurious effects of his bite. However, it may be questioned whether the trespass and the killing of the dog was a reasonably necessary measure of protection. See (1911) 1 HANDBUCH DER TECHNIK UND METHODIK DER IMMUMTÄTO-FORSCHUNG, 442.

TORTS — UNUSUAL CASES OF TORT LIABILITY — KNOWINGLY AND UNLAWFULLY CAUSING THE PLAINTIFF TO EXPEND MONEY TO PREVENT LIABILITY UNDER AN INDEMNITY CONTRACT. — The plaintiff contracted with a surety to indemnify him for any loss incurred as surety on a bond for X.'s appearance to answer a criminal charge. The defendant, although he knew of the plaintiff's contract, persuaded X. to leave the jurisdiction, fearing that X., if he remained, might incriminate him. The plaintiff thereupon reasonably expended money to procure X.'s return, in order to avert liability under his contract. *Held*, that he may recover the sum so expended. *Wakin* v. *Wakin*, 180 S. W. 471 (Ark.).

In the principal case there was clearly no direct contractual relationship between X. and the plaintiff. And, although X. may have contracted with the surety not to subject the latter to liability, the plaintiff cannot be subrogated to the contractual rights of the surety, since he has not yet incurred an obligation to indemnify him. See VANCE, INSURANCE, 427. Hence the plaintiff cannot recover upon the strict principle of *Lumley* v. *Gye* for wrongfully inducing a breach of contract. However, that an action of tort is without precedent is in itself no bar. *Harris* v. *Nashville Trust Co.*, 128 Tenn. 573, 162 S. W. 584. In the principal case the defendant knew both of the plaintiff's contract, and that his act would cause the plaintiff either to suffer the loss now sued for, or to pay the indemnity — an even greater loss. Thus, since a tortfeasor intends to cause whatever harm he knows will result from his act, the defendant's injury to the plaintiff was intentional. See 28 HARV. L. REV. 511. See O. W. Holmes, "Privilege, Malice and Intent," 8 HARV. L. REV. 1. And the trend of modern law is, rightly, to the position that the intentional infliction of harm is an actionable wrong unless justified. *McNary* v. *Chamberlain*, 34 Conn. 384. See 27 HARV. L. REV. 394; SALMOND, TORTS, 2 ed., 497. As the carrying out of his object involved the unlawful act of aiding X. to escape

from justice, the defendant has no justification, although his motive was not to injure the plaintiff. *Cf. March* v. *Wilson*, Busb. (N. C.) 143; *Sparks* v. *McCreary*, 156 Ala. 382, 387, 47 So. 332, 334; *Amick* v. *O'Hara*, 6 Blackf. (Ind.) 258.

VENDOR AND PURCHASER — RESCISSION FOR FRAUD OF THE VENDOR — EFFECT OF "BIG TALK" BY THE PURCHASER. — The plaintiff, an ex-fisherman, negotiating for a purchase of the defendant's land, stated that "he knew good land when he saw it." The defendant thereupon told him sundry lies as to its quality. The plaintiff bought the land. There is evidence that in doing so he relied upon defendant's statements. He now sues to rescind the sale and recover installments of the purchase price. The court below dismissed his suit. *Held*, that this was proper. *Hegdale* v. *Wade*, 153 Pac. 107 (Ore.).

The plaintiff, having challenged the defendant to fool him if he can, is denied recovery when his challenge is successfully accepted. This result, so in agreement with poetic justice, probably cannot be supported on principles that determine justice according to law. It is impossible even by express contract to waive the right to object to fraud to be committed in the future by the other party to the contract. *Industrial & General Trust* v. *Tod*, 180 N. Y. 215, 73 N. E. 7. See *Chism* v. *Schipper*, 51 N. J. L. 1, 11, 16 Atl. 316, 317. *Cf. Bridger* v. *Goldsmith*, 143 N. Y. 424, 38 N. E. 458; *Pearson* v. *Dublin Corporation*, [1907] A. C. 351. But see *Milner* v. *Field*, 5 Exch. 829. The implied waiver resulting from the challenge therefore cannot be effective. But the challenge has other possible effects. If taken in good faith by the seller as a true statement that the buyer is an expert, it negatives the existence of those circumstances of realized special knowledge and the like which properly lead courts to construe statements of opinion as including statements of underlying fact. Compare *Black* v. *Irwin*, 149 Pac. 540 (Ore.), with *White* v. *Sutherland*, 64 Ill. 181. See *Smith* v. *Land & House Property Corporation*, 28 Ch. D. 7, 15. The statements here, of the quality and probable fertility of lands not yet under cultivation, are *primâ facie* statements of opinion. *Lee* v. *McClelland*, 120 Cal. 147, 52 Pac. 300; *Gordon* v. *Butler*, 105 U. S. 553. *Cf. Deming* v. *Darling*, 148 Mass. 504, 20 N. E. 107. If the seller's state of mind was as supposed, they must be taken to be nothing more. Also in the matter of reliance by the buyer, the challenge, plus the fact that he saw the land himself, is evidence that he trusted to his own judgment, or his luck, rather than defendant's statements. But the challenge of itself is not conclusive either that what the seller said was only seller's talk, or that the buyer did not act upon it.

VOLUNTARY ASSOCIATION — RELIGIOUS SOCIETIES — CONTROL BY CIVIL COURTS — LIABILITY FOR EXCLUSION OF A MEMBER. — A minister of the Episcopal Church refused to administer the Communion to the plaintiff. By the canons of the Church, a minister is given authority to refuse the rite to those whom he "deems open, notorious, evil livers, or to have done any wrong to his neighbors by word or deed." A person thus excluded is given an appeal to the bishop. The plaintiff did not pursue this appeal, but brought an action against the minister to recover damages for the exclusion, and for slander. *Held*, that she cannot recover. *Carter* v. *Papineau*, 53 Bk. & Tr. 287 (Mass.).

In England, the union of church and state gives the secular courts an appellate jurisdiction from the tribunals of the established church. *Rex* v. *Dibdin*, [1910] P. D. 57; *Thompson* v. *Dibdin*, [1912] A. C. 533. In America, however, when civil rights are not involved, the secular courts have no jurisdiction over ecclesiastical disputes. *Fitzgerald* v. *Robinson*, 112 Mass. 371. See *Shannon* v. *Frost*, 3 B. Mon. (Ky.) 253, 258. Since church membership affords no interest in the church property, it involves no civil rights, and therefore an expulsion is not a ground for an injunction nor an action in tort.